Supreme Court, U.S.
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No. 99-1032

IN THE

Supreme Court of the United States

ABBOTT LABORATORIES,

Petitioner,

v.

MYLAN PHARMACEUTICALS INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF IN OPPOSITION FOR MYLAN PHARMACEUTICALS INC.

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RESPONDENT'S STATEMENT UNDER RULE 29.6

Respondent Mylan Pharmaceuticals Inc. is a wholly-owned subsidiary of Mylan Laboratories Inc., which is a publicly-held company.

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RESPONDENT'S STATEMENT OF THE CASE

The United States District Court for the Northern District of Illinois granted summary judgment in this case based upon the collateral estoppel effect of a judgment of the same court in *Abbott Laboratories v. Geneva Pharmaceuticals, Inc.*, Nos. 96-C-3331, 96-C-5868, and 97-C-7587 (N.D. Ill. August 28, 1998). The District Court's unreported decision appears in Petitioners Appendix B. In *Geneva*, the District Court held that the only asserted claim of Abbott Laboratories' United States patent 5,504,207 ("the '207 patent") was invalid under 35 U.S.C. § 102(b), because the invention it claimed, Form IV terazosin hydrochloride, had been on sale more than one year before the effective filing date of the patent. The Federal Circuit affirmed the District Court's decision in *Geneva*. *Abbott Laboratories v. Geneva Pharmaceuticals, Inc.*, 182 F.3d 1315 (Fed. Cir. 1999). Abbott's motion for rehearing and its suggestion for a rehearing en banc were both denied.

Following the issuance of its opinion in *Geneva*, the Federal Circuit summarily affirmed the District Court's grant of summary judgment in this case based upon *Geneva*. The Federal Circuit's unreported opinion appears in Petitioner's Appendix A.

Abbott filed a petition for writ of certiorari in the *Geneva* case on October 29, 1999. On December 16, 1999, Abbott filed this petition for writ of certiorari contending that if its petition in *Geneva* were granted, it should be granted in this case as well "to ensure that the judgment of invalidity in this case does not survive the reversal of the related judgment." Petitioner's Brief at 3.

REASONS FOR DENYING THE WRIT

I. THIS COURT SHOULD NOT GRANT CERTIORARI IN *GENEVA* OR IN THIS CASE, HOWEVER IF CERTIORARI IS GRANTED IN *GENEVA*, THIS CASE SHOULD BE CONSOLIDATED WITH IT

For all of the reasons set forth in Geneva's brief in opposition to Abbott's petition for writ of certiorari, the courts below fully considered the issues and correctly applied the settled law, including this Court's own decision in *Pfaff v. Wells Electronic, Inc.*, 525 U.S. 55, 119 S. Ct. 304 (1998). Accordingly, this court should deny Abbott's writ in the *Geneva* case, thereby mooting the reason Abbott sets forth for granting its writ of certiorari in this matter. However, should this Court determine that it is appropriate to grant Abbott's writ of certiorari in *Geneva*, then pursuant to Rule 27(3) of the Rules of the Supreme Court of the United States, Respondent, Mylan Pharmaceuticals Inc., respectfully requests this Court to order that this case be consolidated with *Geneva* for argument as one case, because they involve the identical facts and questions of law.

CONCLUSION

For the foregoing reasons, Abbott's petition for writ of certiorari should be denied. However, in the event this Court grants Abbott's currently pending petition for certiorari in *Abbott Laboratories v. Geneva Pharmaceuticals, Inc.* (Case No. 99-753), Respondent requests that this case be consolidated with that case for purposes of oral argument

pursuant to Rule 27(3) of the Rules of the Supreme Court of the United States.

Respectfully submitted,

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